
(2016) 02 KL CK 0046

In the High Court Of Kerala

Case No : W.A. No. 1438 of 2013 in W.P. (C). No. 14905/2012

Kalasakkarathi Paru and Others

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 09-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11, Section 18, Section 28(A)(3), Section 28A,
Section 28A (3), Section 28A(1), Section 28A(3), Section 3(d), Section 34, Section
4(1)

Citation : (2016) 02 KL CK 0046

Hon'ble Judges : Ashok Bhushan, C.J. and A.M. Shaffique, J.

Bench : Division Bench

**Advocate : Sergi Joseph Thomas and K.M. Augustine, Advocates, for the
Appellant; P.I. Davis, Senior Government Pleader, for the Respondent**

Final Decision : Allowed

Judgement

Ashok Bhushan, C.J.

1. This writ appeal has been filed against judgment dated 27.6.2012 in W.P(C) No. 14905 of 2010 by which judgment, the writ petition filed by petitioners have been dismissed on the ground of delay. Learned Single Judge took the view that the orders passed under Sections 28A and 28A(3) were passed on 10.4.2000, 27.2.2010, 18.12.2009 and 7.4.2010. There is no proper explanation for the delay. Writ petitions were filed by the petitioners challenging the orders passed by the Special Tahsildar (LA) by which, applications filed by the petitioners for reference under Section 28A(3) of the Land Acquisition Act were rejected.

2. Brief facts of the case which are necessary to be noted for deciding the writ appeal are:- the proceedings for acquisition of land were initiated by notification dated 22.2.1993. The awards were declared under Section 11 by the Land Acquisition Officer. None of the petitioners filed any application for reference under Section 18 of the Act. Petitioners also did not file any application on the

basis of the award passed by the Land Acquisition Officer under Section 28A(3). Petitioners have filed application under Section 28A(1) for redetermination of their compensation on the basis of an award under Section 28A(3) and one award under Section 18. Copy of the award passed by the Subordinate Judge, Payyannur in LAR No. 213 of 1987 has been brought on record as Annexure-A19 dated 31.3.2000. The said award was passed in a reference under Section 18, after a remand from the High Court. One of the application filed by the petitioners was based on the award dated 31.3.2000. The application Annexure-A17 was filed by the first petitioner on 25.8.2000 under Section 28A(1) for redetermination of compensation. By Annexure-A8, the said application was rejected by Land Acquisition Officer by order dated 19.3.2009. The Land Acquisition Officer in his order dated 19.3.2009 took the view that judgment in LAR No. 213 of 1987 was originally pronounced on 31.1.1990. But the application under Section 28A has been filed on 23.8.2000 after disposing of the LAA No. 52 of 1992 in LAR No. 213 of 1987. Annexures-A22 to A27 filed by other petitioners were applications filed under Section 28A(1) on the basis of different awards given by Sub Court, Payyannur under Section 28A(3). In the applications, details of the award on the basis of which application was placed for redetermination has been mentioned.

3. By Annexures-A9 to A16 orders, all the applications of petitioners filed under Section 28A(1) have been rejected. Annexures-A9 to A16 are the orders passed by the Special Tahsildar (LA) rejecting the applications of the petitioners under Section 28A(1). The reason given in the order is that since the applications under Section 28A(1) have been filed on the basis of an award under Section 28A(3), the said applications are not maintainable. After rejection of their applications under Section 28A(1), petitioners made application for making a reference under Section 28A(3) which were rejected by orders Exts.P1 to P9. Ext.P1 was rejected by Ext.P11, Ext.P5 was rejected by Ext.P12 and Ext.P6 was rejected by Ext.P13. The Special Tahsildar (LA) in his orders rejecting the prayer for making reference has stated that since the applications were not submitted in Form 22A and as per judgment of the High Court in W.P (C) No. 266/2008 dated 25.2.2008 the applications were submitted under Form 22A, the prayer for reference has to be rejected.

4. The petitioners aggrieved by the aforesaid orders have come up in the writ petition praying for following reliefs:

"i) issue a writ of certiorari or such other appropriate order or direction to call for the records and proceedings leading up to the issuance of Exts.P1 to P13 and to quash Exts.P10 to P13.

ii) issue a writ of mandamus or such other writ order or direction commanding the respondents to refer Exts.P1 to P9 applications filed under Section 28A(3) of the Land Acquisition Act to the Sub Court, Payyannur for adjudication along with the files relating to the same.

iii) Grant such other relief as this Hon"ble Court may deem fit and proper in the circumstances of the case."

5. The learned Single Judge dismissed the writ petition on 27.6.2012 taking the view that there is an inordinate delay in approaching the Court. Learned counsel appearing for the appellants submits that petitioners have given explanation in the writ petition for approaching this Court with delay, which was not adverted. It is submitted that it was pleaded by the petitioners that the judgment relied on by the Special Tahsildar (LA) in *Narayani Amma v. Special Tahsildar* [, 2008 (2) KLT 206] was a judgment per incuriam in view of the subsequent judgment in *Jameson v. State of Kerala* [, 2006 (3) KLT 186], which fact was brought to the notice of 3rd respondent, but no action was taken. It is further submitted that petitioners being poor persons and having been agitating for their due compensation for several years, petitioners were not liable to be thrown out on the ground of delay.

6. Learned counsel for the appellants in support of the writ appeal, however, contends that the orders passed by the Special Tahsildar (LA) rejecting the application for reference under Section 28A(3) were also erroneous on the ground. There was no requirement of making an application for reference under Section 28A(3) under Form No. 22A. It is further submitted that even the earlier order rejecting the application under Section 28A on the ground that application is not maintainable on the basis of an award under Section 28A(3) was also erroneous and petitioners' genuine claim for appropriate amount of compensation has not been looked into by any authority on merits. Learned counsel for the appellants has also placed reliance on the judgment of the Apex Court in *S.L.P(C) No. 34444 of 2013 - Koyyodan Cheriya Kannan and Ors. v. District Collector, Kannur and Ors.* - decided on 2.12.2014. It is submitted that the Apex Court, against the similar orders passed by the High Court and Tahsildar (LA), has held that matter ought to be gone into on merits. It is submitted that in view of the above, the appeal deserves to be allowed setting aside the order passed by the learned Single Judge as well as the orders passed by Tahsildar (LA).

7. Sri. P.I. Davis, learned Senior Government Pleader appearing for respondents submits that even if it is accepted that the application under Section 28A(3) was not given in Form No. 22A as held by the Division Bench of this Court, there is no material in the writ petition or in this appeal to indicate that applications filed by the petitioners under Section 28A(1) as Section 28A(3) were within the time limit. He submits that unless the petitioners prove that the applications were within the period of limitation, there is no occasion to issue any direction as prayed for.

8. Learned counsel for the appellants replying the submission of the learned Senior Government Pleader submits that none of the applications were rejected on the ground of limitation and still it is open for the Special Tahsildar (LA) to consider the question of limitation. However, in view of the fact that none of the

applications were rejected on the ground of limitation, the applications are clearly maintainable.

9. We have considered the submissions of learned counsel for the parties and have perused the records.

10. It is relevant to note that the case which was considered by the Apex Court arose from the same notification under Section 4(1) of the Act under which the petitioners' land was acquired. The provisions of Section 28A were inserted in the Land Acquisition Act by Act 68 of 1984. The provision of Section 28A has been inserted to give benefit to those poor and illiterate persons who could not seek a reference under Section 18. It is submitted that from the scheme of Section 28A delineates that the amount of compensation as determined under Section 11 is enhanced by the Court, the benefit of that enhancement should also be available to those land owners who had not sought a reference under Section 18. The object and purpose of the said provision has been noticed by the Apex Court in *Union of India v. Smt. Pradeep Kumari* [, (1995) 2 SCC 736]. The Apex Court in the judgment has made the following observations:

"The object of the provision is to give the benefit of enhancement of compensation to those persons who due to their illiteracy or financial constraints could not make a reference under Section 18."

11. From the facts as noted above, it is clear that the orders which have been passed by Special Tahsildar (LA) rejecting their application under Section 28A(1), the reason given was that on the basis of an award under Section 28A(3) the application is not maintainable. Further the rejection of the application under Section 28A(3) was on the ground that the application has not been submitted in Form No. 22A. The Special Tahsildar (Land Acquisition) has relied on the judgment of the learned Single Judge dated 14.2.2008 to come to the conclusion that the application under Section 28A(3) has to be made in Form No. 22A. The judgment of the learned Single Judge which has been relied on by the Special Tahsildar (LA) has been reported in , 2008 (2) KLT 206 (supra). The learned Single Judge has held in paragraph (24) that an application under Section 28A(3) has to be in Form No. 22A. Paragraph (24) sub clause (3) is as follows:

"In the result, the Writ Petitions are disposed of in the following manner:

1) xx xxxx xxxxx

2) xx xxxx xxxxx

3) From 1.9.2008 onwards, the Land Acquisition Officers shall insist that applications filed under Ss.18 and 28A (3) of the Act shall be in Form No. 22A, supported by the informations prescribed by the Schedules in Form Nos. 16 and 17. Those applications shall be filed in triplicate. Immediately on receipt of such applications, one copy shall be returned to the applicant duly acknowledging its receipt with official seal and dated signature of the acquisition officer. In case, any application filed is not in the prescribed form, the same shall be returned to

the applicant with a direction to cure the defect and re-submit the same in the prescribed form, within a period fixed by the officer from the date of return. If defects are cured and application represented within the period so fixed, that application shall be treated as one filed on the date on which it was presented for the first time."

12. The aforesaid judgment of the learned Single Judge has been held to be per incuriam by the Division Bench judgment of this Court in Aboobacker v. District Collector [2011 (3) KLT 822]. In paragraph (5) it was held that the judgment of the learned Single Judge in Narayani Amma's case (supra) has to be held per incuriam. Paragraph (5) is quoted below:

"5. We notice that in Narayani Amma's case, no question relating to validity of R.16A is decided nor the direction was issued after taking note of the legal dictum laid by this court in Jameson's case. Nobody has challenged the judgment in Jameson's case and the findings arrived to the effect that R.16A is ultra vires of the Act to the extent it insists in filling of application in form No. 22A, remains settled. We are not sitting in an appellate jurisdiction considering sustainability of the judgment in Jameson's case. Prima facie we do not find any material to take a different view also. In strict sense the two decisions have not taken any conflicting view. Narayani Amma's case can only be considered as per incuriam since the direction contained therein was issued without noticing the dictum laid in Jameson's case."

13. Now coming to the orders passed by the Special Tahsildar (LA) under Section 28A(1), the order indicates that the rejection has been made on the ground that no application under Section 28A(1) is maintainable on the basis of an award under Section 28A(3). Learned counsel for the appellants has rightly placed reliance on the Division Bench judgment of this Court in District Collector v. Muhammed Kunhi [, 2012 (4) KLT 360]. The Division Bench of this Court considered the above issue and has laid down in paragraphs (19) and (20), which read as under:-

"19. So far as not preferring an application it means making effective application. It does not include an application for reference being dismissed on the ground of limitation, because there is no application fructifying into any reference. In such circumstances, owner can maintain application under S.28A of the Act as long as other conditions are fulfilled. A person who gets benefit of higher compensation under S. 28A(3) for making a reference to the court as defined in S.3(d) of the Act and this right cannot be denied.

220. Once application is filed before the Collector, he has to take into account all relevant facts into consideration such as the latest award, date of award, effective application, enhancement or reduction of compensation. As long as the applicant fulfills the conditions envisaged under S.28A, there will be no embargo to proceed with the application. If an award is passed by Reference Court after remand of the matter by appellate court, it is also an award under S.28A."

14. The judgment of the Apex Court which has been relied by learned counsel for the appellants in Koyyodan Cheriya Kannan's case (supra) was also a case where the rejection of application under Section 28A(3) was on the ground that it is not in Form 22A. The writ petition in the aforesaid case was also rejected on the ground of delay. The facts of the case has been noticed by the Supreme Court.

"The learned counsel appearing on behalf of the respondents, Ms. Liz Mathew, justified the impugned judgment and order, inter alia, by contending that the applications filed by the appellants were not only not in the prescribed form Rule 22(A) but also the writ petitions were filed belatedly before the High Court and therefore, the learned Single Judge has rightly affirmed the rejection of the claim made by the appellants under Section 28(A)(3) by the Land Acquisition Collector and the order of the learned Single Judge is correctly not interfered with by the learned Division Bench of the Kerala High Court by passing the impugned common Judgment and order by dismissing the appeal by assigning valid reasons and therefore the same need not be interfered with by this Court."

15. The Apex Court was considering the appeal against the judgment of the High Court where the High Court refused to exercise the discretion under Article 226 on the ground of laches. The Apex Court allowing the appeal held that in the facts of the present case, the High Court committed error in rejecting the writ petition on the ground of delay. Following was observed by the Apex Court in paragraph (3):

"We have heard Mr. Huzefa Ahmadi, learned senior counsel appearing on behalf of the appellants and Ms. Liz Mathew, learned counsel on behalf of the respondents. We are required to examine this matter keeping in view the constitutional and fundamental rights conferred upon the appellant/land losers by the Constitution of India and also the object and the intentment of the provision of Section 28(A)(3) of the Land Acquisition Act of 1894 giving statutory right of claiming compensation on parity as that of similarly placed. The land losers have been solely depending upon the agricultural occupation to eke out their family members livelihood. We have considered the rights of the parties keeping in view the constitutional and fundamental rights of the appellants and examined the correctness of the decision taken by both the Land Acquisition Collector and the constitutional court viz., the High Court of Kerala. The rejection of their applications filed under Section 28(A)(3) of the Land Acquisition Act of 1894 by the Land Acquisition Collector for the reason that the appellants have not filed claim petitions in the Form 22(A), which is prescribed under Rule 16(A) of the Kerala Land Acquisition Rules, which approach of them is highly technical. Time and again, this Court in number of cases has laid down the law that when a litigant approaches a court of law or constitutional court, they are required to examine the substance of the matter having regard to the constitutional and fundamental rights of the constitution referred upon litigants in the matter."

16. The above judgment of the Apex Court is fully supporting the submission raised by the learned counsel for the appellant on both counts. The Apex Court

has observed that in such matters, the Court had to examine the substance of the matter and on technical grounds, the writ petition ought not have been rejected. Similar order passed by the Special Tahsildar (LA) rejecting the application under Section 28A(3) was disapproved by the Apex Court in the aforesaid case. The Apex Court had remanded the matter to the Land Acquisition Collector. Following directions were issued by the Apex Court:

"For the foregoing reasons, we set aside the impugned judgment and order passed in the writ appeals and allow the writ petitions. We remand the matter to the Land Acquisition Collector to examine the claim afresh made by the land losers under Section 28(A)(3) of the Land Acquisition Act with reference to the LAR No. 120/87 passed by the reference court. The appellants are at liberty to furnish other particular as prescribed under Form 22A of the Rules as may be necessary to the Land Acquisition Collector within two weeks from the date of receipt of the copy of this order. The Land Acquisition Collector is required to examine the claim of the appellant-land losers within six weeks thereafter with reference to the market value determined in the award passed in favour of the other land owners of their land which was acquired under the notifications along with land of the land losers herein strictly as provided under Section 28(A)(3) of the Act. After careful examination, if the Land Acquisition Collector finds the appellant-land losers entitled to the market value determined in the award passed of the similar land owners, the said benefit shall be extended to the appellants also along with the statutory benefits provided under Section 34 of the Land Acquisition Act. If the Land Acquisition Collector rejects their claim, the appellants/land losers are entitled to get the same referred to the Jurisdictional Reference Court for adjudication of the market value of their land on par with the awardee of the Award already issued in favour of other land owners."

17. Coming to the submission of Sri. P.I. Davis that there are no materials to indicate that the applications submitted by the petitioners under Sections 28A(1) and 28A(3) were within the limitation, suffice it to say that the orders passed by the Land Acquisition Officer does not indicate that applications were rejected as barred by time. Moreover, it is always open for the Land Acquisition Officer to consider any such issue if it is apparent from the facts of the case.

18. In view of the foregoing discussions, we allow the writ appeal, set aside the judgment of the learned Single Judge as well as the orders Exts.P11 to P13. We further direct that Exts.P1 to P9 applications submitted by the petitioners be considered afresh by the 3rd respondent in accordance with law. The matter having been pending before the learned Single Judge and the Division Bench for several years, we are of the view the 3rd respondent may consider the applications afresh and take an appropriate decision expeditiously, at an early date.

Learned Senior Government Pleader further submit that since the acquisition proceedings were undertaken and completed long ago, it is not sure whether the office of the 3rd respondent is still functioning or not. In the above view of the

matter, we permit the petitioners to submit an application along with copies of all documents before the 3rd respondent, who may take appropriate steps for getting the matter disposed, as early as possible.